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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Darrel Peter Pandeli,

10 Petitioner,

11 v.

12 Charles L. Ryan, *et al.*,

13 Respondents.
14

No. CV-17-01657-PHX-JJT

ORDER

DEATH PENALTY CASE

15 Before the Court are the following motions filed by Respondents: Motion for
16 Order Precluding Defense Team from Contacting Victims (Doc. 9); Motion to Preclude
17 Juror Contact (Doc. 10); and Motion to Set Reasonable Page Limits for Habeas Petition,
18 Answer, and Reply (Doc. 11). Pandeli has filed responses in opposition. (Doc's 15–17.)
19 The Court addresses the motions as follows.

20 **1. Victim contact**

21 Respondents ask the Court enter an order “precluding Pandeli’s defense team
22 from directly contacting any victim in this case and directing that the team instead
23 initiate any such contact through the Office of the Arizona Attorney General.” (Doc. 9 at
24 2.) In support of their request, Respondents cite provisions of state and federal law,
25 including A.R.S. § 13–4433(B), which provides that “[t]he defendant, the defendant’s
26 attorney or an agent of the defendant shall only initiate contact with the victim through
27 the prosecutor’s office,” and the Crime Victims’ Rights Act (CVRA), which gives state
28 crime victims in federal habeas cases “the right to be treated with fairness and with

1 respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8). Pandeli opposes
2 the motion, arguing Respondents do not represent the victims and cannot assert their
3 rights, that the Court is not bound by A.R.S. § 13–4433(B), and that an order precluding
4 contact places an undue burden on Pandeli’s investigation. (Doc. 16.)

5 Whether or not A.R.S. § 13–4433(B) directly applies to these proceedings, the
6 Court independently finds that the statute provides a reasonable mechanism for furthering
7 the CVRA’s goal of respecting a crime victim’s dignity and privacy. Using counsel for
8 Respondents to channel requests to contact victims, as contemplated by the CVRA itself,
9 18 U.S.C. § 3771(b)(2)(B)(i) and (d)(1), does not unduly burden Pandeli’s access to the
10 victims. *See, e.g., Chappell v. Ryan*, No. CV-15-00478-PHX-SPL (D. Ariz. Jul. 21, 2015)
11 (Doc. 19).

12 **2. Juror contact**

13 Respondents ask the Court to “preclude Pandeli’s defense team from contacting
14 the trial or resentencing jurors absent prior leave of Court based on a showing of good
15 cause to believe that juror misconduct occurred.” (Doc. 10 at 4.) Pandeli contends that
16 such a restriction would prevent his defense team from independently investigating his
17 case and is not supported by relevant law. (Doc. 15.)

18 Pandeli is correct that no applicable law prohibits his counsel from interviewing
19 jurors. Neither the Local Rules nor Ninth Circuit law bars post-verdict contact with
20 jurors. *Harrod v. Ryan*, No. CV-16-02011-PHX-GMS, 2016 WL 6082109, at *2 (D.
21 Ariz. Oct. 18, 2016). Respondents are correct, however, that long-established principles
22 discourage post-trial contact with jurors. *See Tanner v. United States*, 483 U.S. 107, 120–
23 21 (1987) (recognizing that allegations “raised for the first time days, weeks, or months
24 after the verdict, seriously disrupt the finality of the process” and could undermine “full
25 and frank discussion in the jury room, jurors’ willingness to return an unpopular verdict,
26 and the community’s trust in a system that relies on the decisions of laypeople”); *Traver*
27 *v. Meshriy*, 627 F.2d 934, 941 (9th Cir. 1980) (explaining that because evidence
28 concerning the manner at which a jury arrived at its verdict is inadmissible to test the

1 validity of a verdict, “the practice of counsel in propounding questions on these subjects
2 to jurors after trial should be discouraged”). Rule 606(b) of the Federal Rules of
3 Evidence, relied on by Respondents, is grounded in the common-law rule against
4 admission of jury testimony to impeach a verdict.

5 Nonetheless, while jurors may not be questioned about their deliberations or
6 mental processes, they may be questioned regarding any extraneous influence on their
7 verdict. *Tanner*, 483 U.S. at 117; *Traver*, 627 F.2d at 941. Accordingly, Rule 606(b)
8 allows jury testimony in limited circumstances to show that (1) extraneous prejudicial
9 information was improperly brought to the jury’s attention, (2) an outside influence was
10 improperly brought to bear upon any juror, or (3) there was a mistake in the verdict
11 form. Fed. R. Evid. 606(b); see *Tanner*, 483 U.S. at 121.

12 Based on these principles, the Court agrees that “investigation directed at
13 discovering the inadmissible considerations of motives and influences that led to a juror’s
14 verdict, including questions designed to elicit a juror’s thoughts on what their verdict
15 might have been in response to evidence not presented at trial is inappropriate and
16 unethical.” *Harrod*, 2016 WL 6082109, at *2. The Court further notes, contrary to
17 Pandeli’s argument, that such evidence is inadmissible with respect to claims of
18 ineffective assistance of counsel. See *Garza v. Ryan*, No. CV-14-01901-PHX-SRB, 2016
19 WL 4591854, at *2 (D. Ariz. Sept. 2, 2016) (collecting cases). It is not necessary to
20 impose a good cause standard because counsel are obligated not to pursue inadmissible
21 evidence about the jurors’ deliberations.

22 **3. Page limits**

23 As they have in other capital habeas cases, Respondents ask the Court to set
24 “reasonable page limits on the habeas petition, answer, and reply,” with a limit of 200
25 pages for the petition and answer and 75 for the reply. (Doc. 11 at 2.) They argue that the
26 Court has discretion to set such limits and cite page-limits imposed in other districts. The
27 District of Arizona has not placed page limits on habeas petitions, however, and this
28 Court declines to do so on an ad hoc basis. Instead, the Court will refer Respondents’

1 request page limitations in capital habeas cases for consideration as a matter of District
2 Court policy. *See Morris v. Ryan*, No. CV 17-00926 (Sep. 28, 2017) (Doc. 16).

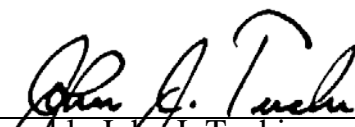
3 For the reasons set forth above,

4 **IT IS ORDERED granting** Respondents' motion to preclude victim contact
5 (Doc. 9) as follows: no person who is defined as a victim in this matter pursuant to
6 Arizona law shall be contacted by anyone working with or on behalf of Pandeli or his
7 counsel unless the victim, through counsel for Respondents, has consented to such
8 contact. If consent is not provided and Pandeli nonetheless believes contact is necessary,
9 he may file a motion with the Court explaining the necessity for such contact.

10 **IT IS FURTHER ORDERED granting in part and denying in part**
11 Respondents' motion to preclude juror contact (Doc. 10). The motion is granted to the
12 extent it would prevent Pandeli from questioning jury members on the course of their
13 deliberations or other matters that are not admissible in evidence absent further
14 authorization of this Court. The motion is denied to the extent it would prevent Petitioner
15 from questioning jurors' concerning any extraneous influences on the jury.

16 **IT IS FURTHER ORDERED denying** Respondents' request to impose page
17 limitations (Doc. 11).

18 Dated this 4th day of October, 2017.

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21 Honorable John J. Tuchi
22 United States District Judge
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